

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

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RENEE GALLOWAY, et al., as :  
individuals and as representatives : Civil Action No.  
of the classes : 3:18cv406  
vs. :  
BIG PICTURE LOANS, LLC, et al. : October 8, 2019  
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COMPLETE TRANSCRIPT OF THE CONFERENCE CALL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 ECF 321.

2           So I guess the first question is -- that I need to  
3 get straight in my mind is why is it that there's a need  
4 preceived by the plaintiff to amend the protective order in  
5 this case, 3:18CV406? What you want to do is use the documents  
6 in Galloway against Martorello, 3:19CV314. So why is there --  
7 why is there an urgency to this?

8           MS. KELLY: Judge, this is Kristi Kelly on behalf of  
9 the plaintiffs. We filed the motion and requested the urgent  
10 decision of the Court because we have an opposition to a motion  
11 for sanctions due in the 3:19 Galloway case on the 10th, and we  
12 want to use the documents produced in this case to explain to  
13 the Court our basis to believe that we filed against the Amlaur  
14 defendants in Galloway 3:19 in good faith, and we don't believe  
15 we can adequately defend against the motion without the use of  
16 those documents.

17           THE COURT: Well, you know then, given that it's the  
18 8th of October, which documents you want to use; is that right?

19           MS. KELLY: Yes. We should have all of them by the  
20 end of the day today, and we were going to send them to the  
21 defendants to see if we could use them, but some of them are  
22 also documents from third parties that we've obtained. So we  
23 don't know if we'll get permission in time to use the documents  
24 in support of that motion without amending this protective  
25 order.

1 THE COURT: What do you mean; that those documents  
2 from third parties were produced pursuant to the protective  
3 order?

4 MS. KELLY: Yes. So primarily the documents that I  
5 think we'll be using is documents produced by the third-party  
6 Rosette law firm. As the Court may recall, there are a lot of  
7 documents that we allege were destroyed in this case, and we  
8 have had to work incredibly hard to get the documents from  
9 third parties, and we've had to fight third parties for this  
10 discovery at various courthouses throughout the country, and  
11 we've done that, and your Court has heard a lot of those  
12 motions here in Virginia as well, and we don't want to have to  
13 do that again in Galloway II, the 3:19 case, when it is  
14 essentially the coconspirators to this RICO enterprise, and the  
15 other issue is fairness. We are --

16 THE COURT: Wait a minute. Ms. Kelly, sorry, but I  
17 still don't understand how the protective order in Galloway is  
18 implicated in any of the documents. So tell me, start back  
19 again now and answer just these questions.

20 MS. KELLY: Okay.

21 THE COURT: How many documents is it that you want to  
22 use to file with your response to that motion for sanctions?  
23 Roughly.

24 MS. KELLY: About ten to 20 documents.

25 THE COURT: All right. So you know what those

1 documents are, the range; right?

2 MS. KELLY: I personally don't. I'm not the one  
3 briefing that issue.

4 THE COURT: Well, who is?

5 MS. KELLY: Another lawyer on our team is.

6 THE COURT: Well, your law firm or somebody on the  
7 plaintiff's team knows the documents you want to use; right?

8 MS. KELLY: We're compiling that, and we should have  
9 them all by the end of the day.

10 THE COURT: If you know that, which documents you  
11 want to use, it's a whole lot easier for me to decide whether  
12 those documents should be produced or not produced if I know  
13 what those documents are instead of ruling in blank. That  
14 doesn't mean that a wholesale ruling is out -- a ruling to make  
15 all the documents usable from one case to the other is out of  
16 order, but -- or that I couldn't consider that, but I see no  
17 need to get into something that broad if you all know what you  
18 are going to do.

19 And if you know -- if you can give me the documents,  
20 and my guess is -- and you give them to Mr. Martorello's  
21 lawyers and to Mr. St. George or Mr. Gray -- it may be you all  
22 can agree that as to those documents, you have no objection to  
23 them being produced by the protective order if they're covered  
24 by the protective order, but if they're documents that you got  
25 from third parties, they're not covered by the protective order

1 in the same way --

2 MS. KELLY: They are, Judge.

3 THE COURT: Wait a minute. In the same way that they  
4 would be if they were documents produced by either -- by the  
5 defendants in the case. There's a different proposition that's  
6 involved. And so getting them from third parties, it looks to  
7 me like, makes a difference as to how I would deal with the  
8 matter.

9 First, I need to know are there orders in the cases  
10 where you got those documents that you want to use that have  
11 their own protective orders, or are they -- or was the  
12 protective order in 3:18CV406 made applicable to the  
13 productions from the third parties? Do you know which of those  
14 is the case, i.e., as to the third parties -- go ahead.

15 MS. KELLY: Yes. The third parties produced those  
16 documents subject to the protective order in this case and in  
17 the Galloway case or the Williams case. And the third parties  
18 are relying on the confidentiality provisions and these  
19 protective orders to govern their documents.

20 THE COURT: Well, if the -- well, that's two  
21 different situations that you just told me. One is you say  
22 they're -- and you say the Galloway case. Which Galloway case  
23 are you talking about; 3:19CV314?

24 MS. KELLY: No, 3:18. The third parties are allowed  
25 to take advantage of the use of the protective order in

1 producing documents to us in the 3:18 Galloway case.

2 THE COURT: So it seems to me that you need to deal  
3 with the fact that those documents are subject to that  
4 protective order, and to the extent the documents are  
5 third-party documents, then don't you have to go get their  
6 permission to use them in the 3:19 case or give them notice  
7 under the protective order that you're going to use them and  
8 give them a chance to object?

9 MS. KELLY: Judge, we don't believe that we need to  
10 do that with third parties because the third parties know the  
11 facts of this case, and the 3:19 Galloway case where we want to  
12 use the documents is related to the same factual circumstances  
13 in the Galloway 3:18 case.

14 THE COURT: To quote Paul Bear Bryant in the 1950s,  
15 that and a nickel will get you a Coke if they're subject to  
16 some order. So by what agreement or order were those documents  
17 produced by those third parties? And that's what covers their  
18 use, it seems to me.

19 MS. KELLY: I understand, Judge. It was by either an  
20 agreement or an order in the Williams case or in the 3:18  
21 Galloway case.

22 THE COURT: So you need -- you've got two different  
23 sets of documents, so you need to have two different  
24 rationales. I mean, some discipline needs to be brought to the  
25 process here to get it structured in the proper way. If you've

1 got 20 documents and that's what you want to use, then confine  
2 your motion to 20 documents or 50 or whatever it is you're  
3 going to use, and set it up in accord with the rules that apply  
4 to the use of those documents.

5 I, in concept, do not buy the argument that there is  
6 some kind of tribal immunity attached to it, but there may or  
7 may not be depending upon what the documents are and how they  
8 were produced, and I can't make those decisions in a vacuum.

9 So if you have documents that you've gotten that are  
10 covered by different orders and they're from parties, that's  
11 one situation. If they're from nonparties and third parties,  
12 that's another. So I think that you all are trying to get me  
13 to sweep with a big, broad broom here, and I'm not prepared to  
14 do that.

15 But the reason I called today is to find out what is  
16 the crisis, and I notice that Mr. Martorello's brief, ECF 318,  
17 says that you could have done this a month ago. And you've  
18 known that you were going to have to do it, and so you sat on  
19 your rights, and now you're asking them to jump through hoops.  
20 And if that's correct, then I don't have much sympathy for you.

21 You know what? You need to get somebody, Mr.  
22 Bennett, who -- you've got so many cases over there, you need a  
23 case manager to manage everything, keep tract of the deadlines  
24 and anticipate what needs to be done in order to get something  
25 usable by X date if you're going forward with this.

1 MR. BENNETT: Your Honor, may I be heard briefly?

2 THE COURT: Yeah.

3 MR. BENNETT: Judge, so to give the Court further  
4 background, there was a filing in a different case -- the truth  
5 is we did not -- we should have but collectively as our team,  
6 we missed the fact that the ability to use documents across  
7 cases did not include the one that is now at issue here. At  
8 the original 16(b) of Galloway I, this Court, on the record,  
9 went on for sometime about why it didn't make any sense that  
10 the documents -- those were for jurisdiction.

11 THE COURT: Excuse me. What is Galloway I? What  
12 number, what document number is it; 3:18CV406?

13 MR. BENNETT: Yes, Judge.

14 THE COURT: All right.

15 MR. BENNETT: And so and then it was a mistake on our  
16 part, and we have a lot going on. Everybody does, as the Court  
17 does, but in keeping all the moving parts together, because we  
18 did not -- we had not paid attention to the fact that the  
19 protective order had not been extended to the new case with its  
20 new dozens of new defense motions.

21 THE COURT: Then the proper motion for you to have  
22 made is to extend the time for filing your response to the  
23 motion for sanctions so that a timely adjudication of issues  
24 with respect to these 20 or 30 documents you're going to use --  
25 you know basically which ones they are -- can be had, and my

1 guess is that probably an agreement could be worked out if it's  
2 only 20 or 30 documents, but if you even eliminate ten of them,  
3 then I still have less to rule on.

4 But instead of doing that, you all chose to follow  
5 the procedure of making the defendants jump through hoops  
6 overnight and want me to make an emergency telephone call when,  
7 in fact, all you had to do was explain this, that you had  
8 overlooked it, and you needed it, and that's good cause for  
9 extending the time, and then we have a situation under control.

10 Won't that solve the problem if I do it that way and  
11 then everybody will have a chance to be heard without jumping  
12 up and down and trying to beat a deadline?

13 MR. BENNETT: Yes, and I make ore tenus a motion to  
14 amend our previous filing or motion to request the enlargement  
15 of time in order to allow proper consideration by the  
16 defendants, and if the defendants won't then agree --

17 THE COURT: Wait a minute, wait a minute, Mr.  
18 Bennett. One thing you is you get your mouth going and say too  
19 much and it's hard to follow. Let's -- you want to extend the  
20 time to file the response to the motion for sanctions. My  
21 question is, are the people who made the motion for sanctions  
22 on the telephone call so that they can be heard on that point?

23 MR. BENNETT: Not all of them, Judge, no, they're  
24 not.

25 THE COURT: That's another little base we need to

1 touch, isn't it? Don't we need to touch that base?

2 MR. BENNETT: We do.

3 THE COURT: My suggestion is that you take the  
4 time -- I'm going to deny without prejudice the plaintiff's  
5 motion to amend the protective order and grant the motion for  
6 adjournment and rescheduling, ECF 317. I'm going to expect you  
7 to get the case in the proper procedural posture so that I can  
8 rule on it with the necessary people understanding this, and  
9 you can order the transcript and send it to those people.

10 I am pleased to give you time to respond, extend time  
11 to respond to the motion for sanctions so that you can make a  
12 full response unless the other side has some serious prejudice  
13 because of it, and in a quick look back when this motion came  
14 in, I don't see that there's any real prejudice to it. But  
15 they have a right to be heard on it.

16 Otherwise, we've really lost the concept of notice  
17 and right to be heard which is fairly important in the system  
18 that we have. And then take the documents, the 20 documents or  
19 30 or whatever -- by now you know what they are because you  
20 drafted up your report, or by the end of the day or tomorrow  
21 you'll know -- and let everybody who is involved know what  
22 documents you are using, you propose to use. You don't have to  
23 describe how you are using them. Just say these are the ones  
24 we're proposing to use.

25 And then put them -- you all have to agree in short

1 order, two days, three days max, we agree to this or or we  
2 don't agree to this. Then you know what the lineup is. Then I  
3 know what is objected to, what is not objected to, and who is  
4 objecting to it, and then you'll have to file a motion that  
5 outlines it and the right people will be able to respond. And  
6 then you'll have the ability to use them in response.

7 I said before I don't think there's any reason not to  
8 have use of one -- documents produced in one litigation in  
9 another one, but because of these prolific use of protective  
10 orders, which I intend to put a stop to at some point here,  
11 there are all these complicating factors. And when the  
12 complicating factors are involved, it's your obligation to  
13 figure out how to uncomplicate them, not leave it to me to do.

14 So how much -- you want to make a motion to extend  
15 the time to respond to your motion for sanctions in what case;  
16 3:19CV314? Is that what you are asking for?

17 MS. KELLY: Yes, Judge, that's correct.

18 THE COURT: And you are responding to number 208; is  
19 that where we are in this case? And 3:19CV --

20 MS. KELLY: Yes, October 10th is the motion for  
21 sanctions.

22 THE COURT: What happened is you all fouled up, you  
23 missed a deadline calculation, didn't figure out what you  
24 needed, so file a motion and get it straight. You can  
25 certainly file that motion right away. Give -- what's the name

1 of the lawyer on the other side? The party is Amlaur Resources  
2 and Brian Jedwab or Jedwabs? They have a right to say, no,  
3 well, we object to that, and I'll be glad to expedite the  
4 schedule for briefing on all that if it's necessary, but I  
5 would think a telephone call probably could solve the problem.  
6 That's the way it usually goes if you do responsible things.  
7 Who is Jedwab's lawyer? Who are these people? I never heard  
8 of them.

9 MR. BENNETT: Judge, we don't --

10 MS. KELLY: They're based out of D.C.

11 THE COURT: You all are talking at the same time. I  
12 never heard of these people, Rebecca Ruby Anzidei and Amadou  
13 Kilkenny Diaw, but you're going to have --

14 MR. BENNETT: Judge, we had not heard of them either  
15 until this case.

16 THE COURT: That doesn't make any difference. My  
17 point is, I don't know whether they object or don't object, but  
18 you have to give them an opportunity to be heard. So I'm going  
19 to let you -- I'm not going to have the hearing on -- what day  
20 was it, the 10th? The --

21 MS. KELLY: The 9th.

22 THE COURT: The 9th. I'm not going to have a hearing  
23 on the 9th, and then I'll let you all get this thing in proper  
24 procedural structure. To keep the record straight, plaintiff's  
25 motion to amend protective order, 310, will be denied because

1 of the configuration of the motion, and the reasons and the  
2 different positions will all be different depending upon what  
3 you do after you do what you should have done.

4 Martorello's motion for adjournment and rescheduling  
5 of October 9, 2019, oral argument, ECF 317, will be denied  
6 because the plaintiff's motion to amend protective order is  
7 premature and has been denied as such. That will take care of  
8 those.

9 And then I will expect you to file the proper motions  
10 and handle things to a conclusion properly from this point  
11 forward, Mr. Bennett. I guess I haven't given the defendants a  
12 chance to say anything, but I'm assuming that you have no  
13 objection to the course of action the Court took; is that  
14 correct --

15 MR. ERBACH: We have no objection, Your Honor.

16 THE COURT: Who is that?

17 MR. ERBACH: Mr. Erbach. Sorry.

18 MR. ST. GEORGE: Your Honor, this is Tim St. George.  
19 No objection. It's essentially what we already proposed.

20 THE COURT: Thank you all very much. That will take  
21 care of things. If you want the transcript, Mr. Bennett, you  
22 have to order it.

23  
24 (End of proceedings.)  
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Date \_\_\_\_\_